IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 43 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAGAV C VAIDYA , OR HIS SUCCESSOR MR. VINESH M SHAH - Appellant(s)

Versus

STATE OF GUJARAT & 2 - Opponent(s)

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Appearance :

MR KG PANDIT for Appellant No(s).: 1.

MR KC SHAH ADDL PP for Respondent No(s).: 1.

MR DILIP B RANA for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 26/07/2005

ORAL JUDGMENT

1.The Khambhat Nagarpalika, through its Food Inspector has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 challenging the

order dated 27.11.2001 passed by the learned Judicial Magistrate First Class, Khambhat in Criminal Case No. 31 of 1990 discharging and acquitting the accused of the charges under Section 2(1-a)(a)(c)(m) and Section 7 (1)(5) read with Section 16 (1)(a)(1) and (2) of the Prevention of the Food Adulteration Act, 1954 (herein after referred to as “the Act” for short). This court has granted leave and admitted the appeal and fixed the matter for hearing in the second weeks of February, 2003 vide order dated 16.12.2002. Record and proceedings were received.

2. Heard K.G. Pandit, learned advocate for the appellant, Mr. K.C. Shah, learned Addl.P.P. for the respondent No. 1 State and Mr. Dilip B. Rana, learned advocate for the respondent No. 2 original accused.

3. The case of the prosecution is that the competent Food Inspector while discharging his duty in the area of Khambhat Nagarpalika, visited the shop of the accused in Chitari Bazar, Khambhat on 18.9.1983 at around 4-30 in the evening in presence of panch witness, he purchased 4.50 grams of Turmeric powder out of 7 Kgs. kept for sale. The notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules” for short) in form No. 6 was issued. The payment of Rs.6.75ps. was made for

purchase of the sample turmeric powder and the necessary formalities were completed. The sample turmeric powder was divided into three equal parts and stored in a cleaned and dried bottle and after applying proper seal in accordance with law, necessary signatures of the panch and vendor were obtained thereon and the necessary panchnama was drawn to this effect. One part of the sample was sent to the Public Analyst. The remaining two parts were sent to the Local Health Authority, Nadiad on 19.9.1989 in accordance with law. On receipt of the report from the Public Analyst on the sample that food article was adulterated, necessary report was prepared to be sent to the Local Health Authority for obtaining necessary permission under the law along with report of the Public Analyst and on getting permission, as required under law, the complaint came to be lodged against the present respondent original accused. The necessary notice under Section 13 of the Act was issued to the accused so as to unable him to avail an opportunity of having been tested the samples before the Central Food Laboratory. It is pertinent to note that the trial Court on the basis of the material and record before him and the evidence led, has thought it fit not to frame charge against the accused and acquitted him

without framing the charge under the impugned order.

4. Shri Pandit, learned advocate for the appellant has vehemently submitted that the learned Magistrate has erroneously recorded acquittal in view of the fact that report of the Central Food Laboratory, which amounts to conclusive proof, has been ignored or rather has not been appreciated in its true perspective and therefore, the acquittal recorded deserves to be reversed in appeal. Shri Pandit has further submitted that the fact of nonavailability of the Food Inspector - complainant for further examination ipso facto cannot be considered to be a lethal blow to the case of the prosecution, which may result into acquittal of the accused. He has further submitted that learned Magistrate has erroneously relied upon the deposition of the complainant and his inability to explain the proportionate starch recorded in the report of the Public Analyst, in fact, the learned Magistrate ought to have taken into consideration the report of the Central Food Laboratory, wherein, an opinion is recorded that subject sample food article contained starch particles of wheat, which amounts to a foreign body contrary to the provisions of Rules and as the same amounts to adulteration, the acquittal ought not to have been recorded. Shri Pandit has further

submitted that Rule 44 (h) of the Rules prohibits any foreign article in the turmeric powder. In the instant case, he submitted that the presence of wheat starch was noticed in a microscopic test and therefore, even on that count also, the order of acquittal deserves to be reversed and accused deserves to be convicted and imposed appropriate sentence. Shri Pandit has further submitted that the so called discrepancy in the report of the Public Analyst and the report of Central Food Laboratory was not required to be answered by the complainant in view of the settled position of law that once the report of the Central Food Laboratory is on the record, the report of the Public Analyst stands obliterated, in view of this, the reasoning recorded by the trial Court for acquitting the accused seems to be erroneous and therefore, the order of acquittal deserves to be reversed. Shri Pandit has also submitted that learned Magistrate has erroneously acquitted the accused without drawing even the formal charge, which amount to hold that there was no substance in the case of the prosecution warranting framing of charge. Thus, the dismissal of the case in this slipshod fashion deserves to be deprecated. The prosecution has led sufficient evidence requiring a proper trial after framing of formal charge as to afford an opportunity to

all the parties to put forward their case. In the instant case, though there was conclusive evidence of Central Food Laboratory indicating adulteration of the sample food article, the learned Magistrate has not even thought it fit to frame formal charge and straightway acquitted the accused, which was absolutely unwarranted and deserves to be reversed.

5. Shri Rana, learned advocate who appears on behalf of the respondent accused has submitted that finding of the Public Analyst and Central Food Laboratory does not indicate the adulteration on account of any substance, which is injurious to health as the substance, which is found to be foreign is nothing but a starch, which in a report of the Public Analyst was that of maze and in the report of the Central Food Laboratory was that of wheat. He further submitted that looking to the provisions contained in the schedule, the standard of turmeric powder is prescribed in Appendix B at Item A.05.20.01. The total percentage by weight upto 60% is permissible and in the instant case, it does not exceed more than 52%. The Rule 44(H) of the Rules cannot be pressed into service in view of the fact that Appendix B itself provides for permissible percentage of Ash and starch etc.

6. This court has perused the record minutely and heard

the counsel of the respective parties. The acquittal appeal can be disposed of on the limited ground of infirmity in the order of the trial Court in straight way acquitting the accused despite there being availability of substantial material in form of the central Food Laboratory report and other incidental material to indicate that there was prima-facie case made out by the prosecution for framing a formal charge and holding full fledge trial. This court is therefore, inclined to quash and set aside the order impugned in the appeal in view of the fact that there is substantial material on record which would call for a full fledge trial so as to afford an opportunity to respective parties to put forward their respective cases. The trial Court has erred in straight way acquitting the accused in the face of the substantial material available on record warranting the full fledge trial. In view of this, the present appeal is partly allowed only on the ground that the trial Court's order is erroneous and it is passed without holding the full fledge trial and affording opportunity to respective parties after drawing the necessary chargesheet. In the result, the order of the trial Court dated 27.11.2001 passed in Criminal Case No. 31 of 1990 is hereby quashed and set aside and the matter is remanded back

to the trial Court for fresh trial in accordance with law so as to afford fullest opportunity to the respective parties. Looking to the passage of time, the trial court is directed to complete the trial as expeditiously as possible preferably within a period of 6 months from the receipt of the order. Office is directed to send back the R&P to the trial Court immediately.

(S.R.BRAHMBHATT, J.)

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